

FILED

JUL 26 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOHN RAY GHOLAR,

Petitioner - Appellant,

v.

ALLEN K. SCRIBNER,

Respondent - Appellee.

No. 05-16096

D.C. No. CV-03-05371-AWI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

California state prisoner John Ray Gholar appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 petition, challenging his conviction for committing a lewd act with a child. We have jurisdiction pursuant to 28 U.S.C. § 2253. We review de novo, *see McNeil v. Middleton*, 344 F.3d 988,

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

994 (9th Cir. 2003), and we affirm.

Gholar contends that the use of his 1986 felony conviction for sodomy to enhance his current sentence was unconstitutional and invalid because he is actually innocent of the 1986 conviction.

In *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394 (2001), the United States Supreme Court specifically held that once a prior state conviction is no longer open to direct or collateral attack, it is “conclusively valid,” and a defendant “may not challenge the enhanced sentence through a petition under § 2254 on the ground that the prior conviction was unconstitutionally obtained.” *Id.* at 404. With the exception of convictions obtained in violation of the right to counsel, a defendant has no right to bring such a challenge. *Id.* Gholar’s 1986 conviction is no longer subject to appeal or collateral attack and, accordingly, cannot be challenged here.

To the extent Gholar raises other contentions not certified for appeal, we construe his contentions as a motion to expand the certificate of appealability, and we deny the motion. *See* 9th Cir. R. 22-1(e); *Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

All pending motions and requests are denied.

AFFIRMED.